

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

NANCY WALLAT and SCOTT  
WALLAT,

Plaintiffs,

v.

DNC PARKS & RESORTS AT  
YOSEMITE, INC, and DOES 1  
through 10 inclusive,

Defendant.

1:05-cv-0394 AWI GSA

ORDER FOR DEFENDANTS TO  
STATE WHETHER THEY AGREE  
TO THE VOLUNTARY  
DISMISSAL OF THIS ACTION  
WITH PREJUDICE

On May 22, 2008, Plaintiffs filed a notice of voluntary dismissal with prejudice of this matter pursuant to Federal Rule of Civil Procedure 41(a)(1).

Rule 41(a)(1), in relevant part, reads:

an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Here, the stipulation of dismissal has only been signed by Plaintiffs. Rule 41(a)(1)(ii) requires that all parties to an action stipulate to voluntarily dismissal after the service of an answer.

1 Thus, Defendant needs to also file a notice stating that it agrees to this action's dismissal.<sup>1</sup>

2 Accordingly, Defendants are ORDERED to state whether they agree to this action's  
3 dismissal within ten (10) days of this order's date of service.

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5 IT IS SO ORDERED.

6 **Dated: August 1, 2008**

**/s/ Anthony W. Ishii**  
**CHIEF UNITED STATES DISTRICT JUDGE**

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27 <sup>1</sup> The court recognizes that it has the power pursuant to Rule 41(a)(2) to dismiss the  
28 action without a stipulation by Defendant. However, a Rule 41(a)(2) dismissal is normally  
addressed through a noticed motion that allows the Defendant to oppose the motion.